%11.07.2006

Present: Mr.K.N.Kataria, Senior Advocate with
Mr.C.M.Oberoi for the plaintiff.
Mr.Y.P.Chandna for the defendant.

+CS(OS) No.1540/98
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1. Suit filed by the plaintiffs seek recovery of possession i.e. ejectment of defendant as also damages for unauthorized use and occupation beyond the lease period.

2. Possession being handed over during the pendency of the suit, only issue which requires adjudication is, whether the plaintiffs are entitled to mesne profits from the defendant and if yes, for what period and at what rate. Further issue which requires adjudication is whether plaintiffs are entitled to any interest.

3. Vide lease Ex.P-1 dated 17.8.1989, built up premises admeasuring 1800 sq.ft. on the ground floor of property No.G-22, NDSE, Part-I (Market) were let out to the defendant for a period of 3 years with an option of further renewal. Renewal option was exercised. Lease was extended uptil 17.8.1995. I am concerned with the period 17.8.1995 till 30.9.1999 for the reason, as noted above, lease

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expired on 17.8.1995 and premises were vacated on 53 30.9.1999. Total period, therefore, comes to 49 months and 15 days.

4. Evidence on the issue of rent paid for premises in the vicinity is the statement of PW-1 who has deposed that after the premises were vacated, he let out the same in August,2000 at a monthly rent of Rs.4.25 lacs. He has also deposed that for the first floor premises in South Extension Part-II (Market) J&K Bank took the premises on rent @ Rs.80/- per sq.ft. He has also deposed that for a first floor premises at E-14, NDSE, Part-II Market, Global Trust Bank took the premises on rent @ Rs.100/- per sq.ft. He has also deposed that premises No.F-43, a residential property adjacent to the market was let out to Hongkong Shanghai Bank at a monthly rent of Rs.8 lacs for an area admeasuring 4200 sq.ft. on the ground floor. Further deposition is that premises No.G-15 in the main market was taken onrent by Bata India at a rent of Rs.4.5 lacs w.e.f. 1.8.1998.

5. Lease dated 9.2.2000 pertaining to the lease in favour of Hongkong Shanghai Bank being Ex.PW-1/1, (certified copy of the lease obtained by PW-1) shows that the lease

was for the mezanine floor admeasuring 540 sq.ft. Rent being Rs.60,000/- per month for the period 1.6.1998 to 31.5.2001. 54

6. PW-2 Dr.Pradeep Trehan, owner of ground floor shop No.G-15 has deposed that he had let out the premises to Bata India Ltd. at a monthly rent of Rs.1.45 lacs in the year 1998 with provision of escalation at 20% every three years. Area of the leased premises was not brought out with clarity but during cross-examination the witness stated that the plot area was 250 sq.yards. I may note that the lease deed has not been produced by this witness.

7. DW-2, Rajinder Prasad Jain, Assistant Manager, Bank of Rajasthan, who was produced as a defence witness stated that there were other banks in the area and admitted tenancy with J&K Bank Ltd. and Global Trust Bank but could not state anything about the rent.

8. I would prefer to go by the proved documents. Ex.PW-2/A being the lease deed dated 27.4.1998 between the owner and J&K Bank Ltd. shows that for first floor of premises No.E-9, south Extension, Part-II, monthly rent was Rs.80/- per sq.ft. with 15% increase every three years.

9. PW-3 who proved Ex.PW-3/1, being lease deed dated 8.1.1999 between the owner of E-14, South Extension, Part-II and Global Trust Bank Ltd., reveals that the first floor premises was taken on rent @ Rs.100/- per sq.ft. with renewal after three years with 20% increase in rent.

10. Though plaintiff No.1 in his deposition when he examined himself as PW-1 stated the area to be 4200 sq.ft. and that the monthly rent was Rs.8 lacs, same is not borne out from the lease in question.

11. Documentary evidence, Ex.PW-1/1, Ex.PW-2/A and Ex.PW-3/1 shows as under :

a) Ex.PW-1/1 :- Rent per sq.ft. For a mezanine floor for the period 1.6.1998 to 31.5.2001 is Rs.111/- per month.

b) Ex.PW-2/A :- Rent per sq.ft. For a first floor effective from 27.4.1998 is Rs.80/- per month.

c) Ex.PW-3/1 :- Rent per sq.ft. For a first floor effective from 8.1.1999 is Rs.100/- per month.

12. It is obvious that there is a wide fluctuation in rent and there is consistent rise in rent over the years. There is thus intrinsic evidence of a general rise in rentals in the area.

13. Ground floor premises fetch a much higher rent. I

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may note that the first plaintiff who examined himself as PW-1 has referred to the suit premises being let out after they were vacated at much higher rent but unfortunately, the lease deed was not proved.

14. Taking judicial notice of the fact that the ground floor premises fetch at least 25% to 30% higher monthly rent than the first floor premises, I determine the fair market rent as of 1998 at Rs.140/- per sq.ft per month. Since I have to determine the damages for the period 17.8.1995 to 30.9.1998, I treat the average monthly rent at Rs.130/- per sq.ft. per month.

15. As noted above, total area is 1800 sq.ft. Monthly rent, therefore, comes to Rs.2,34,000/-. For 49 months and 15 days, total damages, therefore, come to Rs.2,34,000/- x 49.5 = Rs.1,15,83,000/- (Rupees one crore two fifteen lacs and eighty three thousand only).

16. There is no evidence lead by the parties on the interest. But taking note of the fact that for the period in question, banks were offering interest @ 10% per annum on fixed deposits, I hold that the plaintiffs would be entitled to interest @ 10% per annum on the sum awarded. Interest

would accrue each month on the monthly damages determined by me i.e. Rs.2,34,000/- per month.

17. Since admittedly rent was being paid to plaintiff No.1, I direct that the sum awarded would be paid to plaintiff No.1.

18. Suit accordingly stands disposed of passing a decree in terms of paras 14 to 17 above.

19. Plaintiffs would be entitled to costs.

July 11, 2006
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PRADEEP NANDRAJOG, J.